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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRAD HAEBERLE, MICHAEL DEHART,
KAREN WISNIEWSKI, and DOUG EMERY

Appeal 2009-005329
Application 10/628,977¹
Technology Center 2100

Decided: February 23, 2010

Before JEAN R. HOMERE, THU A. DANG, and STEPHEN C. SIU,
Administrative Patent Judges.

HOMERE, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ Filed on July 28, 2003. This application claims priority from provisional application 60/398,956, filed July 27, 2002, and provisional application 60/441,838, filed on January 22, 2003. The real party in interest is Siemens Buildings Technologies, Inc. (App. Br. 2.)

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) (2002) from the Examiner's final rejection of claims 13 through 16, 18 through 28, and 30 through 42. (App. Br. 2.)² Claims 1 through 12, 17, and 29 have been cancelled. (*Id.*) We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm-in-part and enter a new ground of rejection.

Appellants' Invention

Appellants invented a method and system for allowing remote users online access to service information for one or more building sites. (Spec. 1, ll. 17-19.) In particular, the invention relates to enabling the remote users to place online service requests and access works orders, service histories, and service contract details. (*Id.*) According to Appellants, the claimed invention not only facilitates the development of application programs for building systems, but enables remote users to obtain timely analysis of data from a building system without the need to maintain application programs or a database at the building system site. (Spec. 19, ll. 1-4.)

Illustrative Claim

Independent claim 13 further illustrates the invention as follows:

13. A computer implemented method for providing information relating to service activity for a plurality of building sites:
providing a web portal comprising a database, and storing service related information about a plurality of building sites in said database, said web portable capable of being operatively connected to one or more clients;

² All references to the Appeal Brief are to the Appeal Brief filed on January 25, 2008, which replaced the prior Appeal Brief filed on December 6, 2007.

receiving at said web portal a request for information about a status of service activity for one or more building sites from one or more clients;

determining at said customer web portal a plurality of service activities that are implicated by said request;

communicating from said web portal information implicated by said request such that said information is capable of being on a client display.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Hunter	6,363,422 B1	Mar. 26, 2002
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Rejection on Appeal

The Examiner rejects the claims on appeal as follows:

Claims 13 through 16, 18 through 28, and 30 through 42 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Hunter.

Appellants' Contentions

Appellants contend that Hunter fails to disclose a web portal that stores and subsequently provides access to service-related information for a building site. (App. Br. 6.) In particular, Appellants argue that Hunter's disclosure of providing a user with operational data about a building control system does not teach service-related information. (*Id.*) Further, Appellants allege that Hunter's disclosure of status information about a system's state and history, including all supported power, environmental, security, health/safety equipment, and fire equipment, does not teach maintenance, repair, or other service-related information. (*Id.* at 7.) Additionally, Appellants contend that Hunter's disclosure of monitoring and controlling information refers only to normal building operations (e.g., temperature

control, alarm monitoring, etc.) and does not teach maintenance, repair, or other service-related information. (*Id.* at 8.)

Examiner's Findings and Conclusions

The Examiner finds that Hunter's disclosure of a client device that monitors a plurality of facilities and, further, utilizes various databases to store service information, teaches storing service-related information about a plurality of building sites in a database. (Ans. 8.) The Examiner also finds that Hunter's disclosure of a client device that monitors the status of services for a plurality of facilities teaches receiving at a web portal a request for information about a status of service activity for one or more building sites. (*Id.* at 8-9.) Additionally, the Examiner finds that "maintenance, repair, or similar activities" are not explicitly recited in independent claim 13 and, furthermore, Hunter's disclosure of a system for monitoring services for a plurality of facilities teaches determining a plurality of service activities implicated by a request. (*Id.* at 9.)

II. ISSUE

Have Appellants shown that the Examiner erred in finding that Hunter anticipates independent claim 13? In particular, the issue turns on whether:

- (a) Hunter teaches "storing service related information about a plurality of building sites in said database," as recited in independent claim 13;
- (b) Hunter teaches "receiving at said web portal a request for information about a status of service activity for one or more building sites," as recited in independent claim 13; and

(c) Hunter teaches “determining...a plurality of service activities that are implicated by said request,” as recited in independent claim 13.

III. FINDINGS OF FACT

The following Findings of Fact (“FF”) are shown by a preponderance of the evidence.

Appellants’ Specification

1. The claimed invention provides “a customer web portal . . . enabling external users to access reports, work orders, service histories and service contract details that may be generated by applications operating on a database or data mart.” (Spec. 8, ll. 3-5.)
2. According to Appellants’ Figure 10, “the display area 418 allows a user to display service information based upon system types such as fire, HVAC, mechanical, and security.” (*Id.* at 43, ll. 10-11.) Additionally, Appellants’ Specification discloses that “a user may wish to obtain service contract information about its HVAC systems, mechanical systems, fire safety systems, and other types of systems used in a building site.” (*Id.* at 51, ll. 11-14.)

Hunter

3. Hunter generally relates to facilities management systems and, in particular, to an integrated and networked system for facilities management systems which is remotely operable through Internet protocols. (Col. 1, ll. 6-9.)
4. Hunter’s Figure 1 depicts a semi-schematic block diagram of an exemplary client device (10) which is configured to communicate with a plurality of individual facility infrastructure apparatuses (14). (Col. 6, ll. 59-

63.) Hunter discloses that client system (10) may be connected to other client systems and, further, a control source, such as a server application or central database unit. (Col. 8, ll. 38-42.) Hunter discloses that each infrastructure apparatus (14) “might belong to one of four main categories of facilities management equipment; namely, power supply and distribution equipment, environmental control equipment, health/safety/fire monitoring equipment, and security monitoring equipment.” (*Id.* at ll. 60-65.) In particular, when prompted by the server, the client system (10) is able to pass appropriate control variables to its supported equipment, or infrastructure apparatuses (14), thereby commanding each apparatus to perform a particular function, such as setting a thermostat to a particular temperature, turning on (or off) a heating, ventilating, and air condition (“HVAC”) apparatus, cascading through a set of security cameras, raising (or lowering) ambient light levels, and the like. (Col. 6, ll. 17-23.)

5. Hunter’s Figure 2 depicts an exemplary network server (30) that comprises an application architecture, or suite of programs, including a master operating or database engine (38), which carries out all of the response variable processing tasks and, further, is responsible for making a determination as to what action is appropriate in response to a monitoring indication by the client system (10). (Col. 12, ll. 11-12, 47-51.) Additionally, the database engine (38) maintains information about past actions taken, from a monitoring perspective. (*Id.* at ll. 54-56.) “[T]he server (30) also includes a service database (42) for collecting and storing periodic monitoring and control data provided by various client systems and reported to the server during each client’s reporting period. The server stores the polling data in the service database (42) and is able to generate

various reports for the stored data for the facilities management system users.” (Col. 13, ll. 10-17.) Further, server (30) includes an operational database (40) which is formatted for direct access and displays a web-enabled spreadsheet application, preferably such as an Excel 97/98 spreadsheet, manufactured and sold by the Microsoft Corp. (*Id.* at ll. 31-35.)

IV. PRINCIPLES OF LAW

Claim Construction

“[T]he words of a claim ‘are generally given their ordinary and customary meaning.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (citations omitted). “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Id.* at 1313.

“[T]he PTO gives claims their ‘broadest reasonable interpretation.”’ *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). “Moreover, limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)). Our reviewing court has repeatedly warned against confining the claims to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d at 1323.

Anticipation

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm.*

Corp., 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992)).

Anticipation of a patent claim requires a finding that the claim at issue “reads on” a prior art reference. In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.

Atlas Powder Co. v. IRECO, Inc., 190 F.3d 1342, 1346 (Fed Cir. 1999)
(internal citation omitted).

Obviousness

“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.” *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998) (citation omitted).

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” and discussed circumstances in which a patent might be determined to be obvious. *Id.* at 415 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that “[t]he

combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* at 415, 417.

In identifying a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art teachings, the Examiner must show “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

V. ANALYSIS

Claim 13

Independent claim 13 recites, in relevant parts:

1) storing service related information about a plurality of building sites in said database; 2) receiving at said web portal a request for information about a status of service activity for one or more building sites; and 3) determining...a plurality of service activities that are implicated by said request.

We first consider the scope and meaning of the term “service-related information,” which must be given the broadest reasonable interpretation consistent with Appellants’ disclosure, as explained in *In re Morris*, 127 F.3d 1048 (Fed. Cir. 1997):

[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.

Id. at 1054. *See also In re Zletz*, 893 F.2d at 321 (stating that “claims must be interpreted as broadly as their terms reasonably allow.”). Appellants’ Specification states the following:

[T]he display area (418) allows a user to display service information based upon system types such as fire, HVAC, mechanical, and security. . . .

[A] user may wish to obtain service contract information about its HVAC systems, mechanical systems, fire safety systems, and other types of systems used in a building site.

(Spec. 43, ll. 10-11; Spec. 51, ll. 11-14; *see also* FF 2).

Additionally, the Summary of the Invention section of Appellants’ Specification states the following:

[A] customer web portal enabl[es] external users to access reports, work orders, service histories and service contract details that may be generated by applications operating on a database or data mart.

(Spec. 8, ll. 3-5; *see also* FF 1).

Upon reviewing Appellants’ Specification, we find that the claim term “service-related information” may be broadly, but reasonably construed as any reports relating to fire, HVAC, mechanical, and security systems within a building site.

As detailed in the Findings of Fact section, Hunter discloses a facilities management system whereby a client device works in conjunction with a server, or central database unit, to control the infrastructure of designated facilities. (FF 3-4.) In particular, Hunter discloses that the client device commands the infrastructure components of each facility by sending appropriate control variables to the central database unit. (FF 4.) Further, Hunter discloses that the infrastructure components include temperature control, HVAC units, security cameras, and lighting. (*Id.*) We find that

Hunter's disclosure of a facilities management system teaches a client computer and central server, with a corresponding database, that monitors and controls a building's temperature, HVAC unit, security cameras, and lighting. Therefore, consistent with the broadest reasonable interpretation adopted above, the temperature control, HVAC units, security cameras, and lighting disclosed in Hunter amounts to service-related information.

Further, Hunter discloses that the central database unit includes an engine that processes tasks and stores information. (FF 5.) In particular, Hunter discloses that the central database unit is capable of generating reports containing the control data of each facilities infrastructure component. (*Id.*) Additionally, Hunter discloses that the central database unit provides these respective reports to corresponding users via each client device. (*Id.*) We find that Hunter's disclosure teaches that the central server stores information in various databases and provides reports to users via respective client computers. In particular, we find that Hunter's various databases store information pertaining to a building's temperature control, HVAC units, security cameras, and lighting and, therefore, teaches "storing service related information about a plurality of building sites in said database," as recited in independent claim 13. We also find that Hunter's disclosure teaches that when a respective user requests a report via a client computer, the central server retrieves the requested information from the corresponding database and transmits the report back to the client computer. Thus, we find that Hunter's cited disclosure teaches "receiving at said web portal a request for information about a status of service activity for one or more building sites," and "determining...a plurality of service activities that are implicated by said request," as recited in independent claim 13.

Alternatively, we note that Appellants cannot rely solely upon the content or type of the service-related information to patentably distinguish independent claim 13 over the prior art of record. The content or type of such information is non-functional descriptive material, which is not entitled to any patentable weight. *See In re Lowry*, 32 F.3d 1579, 1583 (Fed. Cir. 1994) (“Lowry does not claim merely the information content of a memory.... Nor does he seek to patent the content of information resident in a database.”). *See also Ex parte Nehls*, 88 USPQ2d 1883, 1887-90 (BPAI 2008) (precedential); *Ex parte Curry*, 84 USPQ2d 1272 (BPAI 2005) (informative), *aff’d*, slip op. 06-1003 (Fed. Cir. June 2006) (Rule 36). It follows that Appellants have not shown that the Examiner erred in finding that Hunter anticipates independent claim 13.

Claims 14 and 26

Appellants contend that Hunter’s disclosure of monitoring and controlling status information does not teach communicating information regarding a plurality of service activities implicated by a request and then receiving an additional request for further information on an individual service activity. (App. Br. 10-11.) Therefore, Appellants argue that Hunter does not teach “receiving a request from a client to display further information about an individual service activity,” as recited in dependent claim 14. (*Id.*) We do not agree.

As set forth above, we find that Hunter’s disclosure teaches that when a respective user requests a report via a client computer, the central server retrieves the requested information from the corresponding database and transmits the report back to the client computer. We also find that Hunter’s disclosure teaches that the various databases store information pertaining to

a building's temperature control, HVAC units, security cameras, and lighting. In particular, we find that if a user can request a report concerning service-related information, the user can also request a report pertaining to an individual service activity regarding a building's temperature control, HVAC units, security cameras, and lighting. Thus, we find that Hunter's disclosure teaches the disputed limitation. It follows that Appellants have not shown that the Examiner erred in finding that Hunter anticipates dependent claim 14.

Appellants do not provide separate arguments for patentability with respect to dependent claim 26. Therefore, we select dependent claim 14 as representative of the cited claim. Consequently, Appellants have not shown error in the Examiner's rejection of dependent claim 26 for the reasons set forth in our discussion of dependent claim 14. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2008).

Claims 15, 18 through 20, 25, 27, 30 through 32, and 37 through 42

Appellants do not provide separate arguments for patentability with respect to independent claim 25 and dependent claims 15, 18 through 20, 27, 30 through 32, and 37 through 42. Therefore, we select independent claim 13 as representative of the cited claims. Consequently, Appellants have not shown error in the Examiner's rejection of independent claim 25 and dependent claims 15, 18 through 20, 27, 30 through 32, and 37 through 42 for the reasons set forth in our discussion of independent claim 13. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2008).

Claims 16 and 28

Appellants contend that Hunter's disclosure of monitoring and controlling status information does not teach obtaining service-related

information about the type of system that the service activity is being provided for. (App. Br. 11.) Further, Appellants argue that Hunter's disclosure of multiple client systems does not imply communicating to a client information regarding the type of system. (*Id.* at 11-12.) Therefore, Appellants allege that Hunter does not teach "said service activity information further comprises information about the type of system a service activity is being provided for," as recited in dependent claim 16. (*Id.*) We do not agree.

As set forth above, we find that Hunter's disclosure teaches storing information pertaining to a building's temperature control, HVAC units, security cameras, and lighting in various databases. In particular, we find that Hunter's disclosure of service-related information pertaining to a building's temperature control, HVAC units, security cameras, and lighting amounts to service-related information about the type of system that is receiving a service activity, e.g., HVAC, mechanical, and security. Thus, we find that Hunter's disclosure teaches the disputed limitation. It follows that Appellants have not shown that the Examiner erred in finding that Hunter anticipates dependent claim 16.

Appellants do not provide separate arguments for patentability with respect to dependent claim 28. Therefore, we select dependent claim 16 as representative of the cited claim. Consequently, Appellants have not shown error in the Examiner's rejection of dependent claim 28 for the reasons set forth in our discussion of dependent claim 16. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2008).

Claims 21 and 33

Appellants contend that Hunter's disclosure of ordinary building control operations, such as setting the temperature, light levels, and security cameras, does not teach a "service order," as claimed. (App. Br. 12-13.) Therefore, Appellants argue that Hunter does not teach "receiving a request from a client for information about an individual service order," as recited in dependent claim 21. (*Id.*) We do not agree.

As set forth above, we find that Hunter's disclosure teaches that a user requests a report via a client computer and the central server transmits the report back to the client computer. We also find that Hunter's disclosure teaches that the various databases of the central server store information pertaining to a building's temperature control, HVAC units, security cameras, and lighting. In particular, we find that Hunter's disclosure of a user requesting a report concerning service-related information from a central server amounts to a user requesting an individual service order pertaining to a building's temperature control, HVAC units, security cameras, and lighting. Thus, we find that Hunter's disclosure teaches the disputed limitation.

Alternatively, we note that Appellants cannot rely solely upon the content or type of an information request pertaining to an individual service order to patentably distinguish dependent claim 21 over the prior art of record. The content or type of such information is non-functional descriptive material, which is not entitled to any patentable weight. *See In re Lowry*, 32 F.3d at 1583. It follows that Appellants have not shown that the Examiner erred in finding that Hunter anticipates independent claim 21.

Appellants do not provide separate arguments for patentability with respect to dependent claim 33. Therefore, we select dependent claim 21 as representative of the cited claim. Consequently, Appellants have not shown error in the Examiner's rejection of dependent claim 33 for the reasons set forth in our discussion of dependent claim 21. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2008).

Claims 22 through 24 and 34 through 36

Appellants contend that the Examiner's assertion of organizing data utilizing Microsoft Excel is irrelevant and, further, does not teach that communicated data is organized by "site," "system," or "type of service," as claimed. (App. Br. 14.) Therefore, Appellants argue that Hunter does not teach "wherein said communicated service related information is organized by site...system...[or] type of service," as recited in dependent claims 22 through 24. (*Id.*) We agree.

As detailed in the Findings of Fact section above, Hunter discloses utilizing a web-enabled spreadsheet application, such as an Excel 97/98 spreadsheet, to display information stored in the various databases. (FF 5.) We find that Hunter's disclosure teaches a Microsoft Excel spreadsheet that outputs data in a tabular fashion. However the cited disclosure falls short of teaching or suggesting that service-related data may be organized by site, system, or type of service. Although Hunter discloses a Microsoft Excel spreadsheet that outputs data in a tabular fashion, an ordinarily skilled artisan would view Hunter's disclosure as a mere suggestion that service-related data may be organized by site, system, or type of service. While such a suggestion might be adequate to show obviousness, it is insufficient to show anticipation. Absent a showing that Hunter expressly or inherently

describes organizing service-related data by site, system, or type of service, we find that the Examiner has improperly relied upon Hunter's disclosure to teach the disputed limitations. It follows that Appellants have shown that the Examiner erred in finding that Hunter anticipates dependent claims 22 through 24.

Because dependent claims 34 through 36 also recite the limitations discussed above, we find that Appellants have also shown error in the Examiner's rejection of these claims for the reasons set forth in our discussion of dependent claims 22 through 24.

VI. NEW GROUND OF REJECTION

35 U.S.C. § 103(a)

Dependent claims 22 through 24 recite, in relevant part, "wherein said communicated service related information is organized by site...system...[or] type of service."

As set forth above, we find that Hunter's disclosure teaches a Microsoft Excel spreadsheet that outputs data in a tabular fashion. (FF 5.) In particular, we find that an ordinarily skilled artisan would readily appreciate that Hunter's disclosure of a Microsoft Excel spreadsheet that outputs data in a tabular fashion may be utilized to organize service-related data by site, system, or type of service. Therefore, dependent claims 22 through 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunter.

Because dependent claims 34 through 36 also recite the limitations discussed above, we find that these claims are also unpatentable for the reasons set forth in our discussion of dependent claims 22 through 24.

VII. CONCLUSIONS OF LAW

1. Appellants have not shown that the Examiner erred in rejecting claims 13 through 16, 18 through 21, 25 through 28, 30 through 33, and 37 through 42 as being anticipated under 35 U.S.C. § 102(a).

2. Appellants have shown that the Examiner erred in rejecting claims 22 through 24 and 34 through 36 as being anticipated under 35 U.S.C. § 102(a).

3. We have entered a new ground of rejection against claims 22 through 24 and 34 through 36 as being unpatentable under 35 U.S.C. § 103(a).

VIII. DECISION

1. We affirm the Examiner's decision to reject claims 13 through 16, 18 through 21, 25 through 28, 30 through 33, and 37 through 42 as being anticipated under 35 U.S.C. § 102(a).

2. We reverse the Examiner's decision to reject claims 22 through 24 and 34 through 36 as being anticipated under 35 U.S.C. § 102(a).

3. We reject claims 22 through 24 and 34 through 36 as being unpatentable under 35 U.S.C. § 103(a).

37 C.F.R. § 41.50(b) provides that, "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that the Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of

rejection to avoid termination of proceedings (37 C.F.R. § 1.197 (b)) as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner ...

(2) Request rehearing. Request that the proceeding be reheard under 37 C.F.R. § 41.52 by the Board upon the same record ...

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2009).

AFFIRMED-IN-PART
37 C.F.R. § 41.50(b)

nhl

Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830